

These are the tentative rulings for civil law and motion matters set for Thursday, March 5, 2015, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Wednesday, March 4, 2015. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

NOTE: Effective July 1, 2014, all telephone appearances will be governed by Local Rule 20.8. More information is available at the court's website, www.placer.courts.ca.gov.

EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY COMMISSIONER MICHAEL A. JACQUES AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 40, LOCATED AT 10820 JUSTICE CENTER DRIVE, ROSEVILLE, CALIFORNIA.

1. M-CV-0062704 Peart, Patrick Joseph - In Re the Petition of

The petition for writ of mandate was continued to April 2, 2015 at 8:30 a.m. in Department 40.

2. M-CV-0062882 Federal National Mortgage Ass'n vs. Kosovska, Zoya, et al

The motion to quash is dropped from the calendar as the motion was stricken pursuant to the court's February 26, 2015 order.

3. M-CV-0063068 Ponderosa Terrace, LLC vs. Palmer, Jana Marie

The motion to strike is denied without prejudice as defendant has not provided the statutory 16 court days notice and service for the motion.

4. S-CV-0029734 Hilburn, David, et al vs. Lund, John, et al

The motion for attorney's fees is continued to March 19, 2015 at 8:30 a.m. in Department 42. The court apologizes to the parties for any inconvenience.

5. S-CV-0030222 Bennett, Richard, et al vs. Centex Homes, et al

Cross-defendant Milgard Manufacturing's unopposed Motion for Determination of Good Faith Settlement is granted. Based on the standards set forth in *Tech-Bilt v. Woodward Clyde & Associates* (1985) 38 Cal.3d 488, the settlement at issue is within the

reasonable range of the settling cross-defendant's proportionate shares of liability for plaintiffs' injuries and therefore is in good faith within the meaning of CCP§877.6.

6. S-CV-0030314 Belisle, David, et al vs. Centex Homes, et al

Cross-defendant Ironshore Specialty Insurance Company's Motion for Leave of Court to Serve Form Interrogatories on Plaintiffs is dropped from the calendar. It appears from the moving papers that the motion is directed to the discovery referee.

7. S-CV-0033242 Holmes, Bob vs. Weiler, Steve, et al

This tentative ruling is issued by the Honorable Charles D. Wachob and oral argument shall be held on March 5, 2015 at 8:30 a.m. in Department 42:

The appearances of the parties are required for the hearing on the motion for summary judgment.

8. S-CV-0033842 Sweda, John L., et al vs. Ford Motor Company

The motion for summary adjudication is continued, on the court's own motion and for good cause appearing, to March 12, 2015 at 8:30 a.m. in Department 40.

9. S-CV-0034348 Swearingen, Olga, et al vs. Bank of America, NA, et al

This tentative ruling is issued by the Honorable Michael W. Jones. If oral argument is request, it shall be heard in Department 43:

Plaintiffs' Motion for Leave to File Second Amended Complaint

The unopposed motion is granted. The court may permit a party to amend its operative pleading in the furtherance of justice and on such terms as may be just. (*Code of Civil Procedure section 473(a)(1); Code of Civil Procedure section 576.*) The moving party must also show that the amendment will not prejudice any opposing party. (*Douglas v. Superior Court (1989) 215 Cal.App.3d 155, 158.*) Courts have broad discretion in granting leave to amend a pleading and such discretion is usually exercised liberally to permit amendment to the pleading. (*Howard v. County of San Diego (2010) 184 Cal.App.4th 1422, 1428.*) Plaintiffs' motion has been brought in a timely fashion and there is no showing of prejudice to defendants.

The second amended complaint shall be filed and served on or before March 16, 2015.

10. S-CV-0034500 Andoria LLC vs. Gaube, Donald F., et al

Defendant's Motion to Retain Jurisdiction to Enforce Settlement is granted pursuant to CCP§664.6.

11. S-CV-0034794 Lowe, Lawrence, III vs. Vian Enterprises, Inc., et al

The Motion to Compel Further Responses to Deposition Questions and Production of Documents is granted in part.

Defendant's request as to deposition question nos. 1, 7, 8, 9, 10 are denied.

Defendant's request as to deposition question nos. 2, 3, 4, 5, 6, and 11 are granted. Plaintiff shall provide further responses. However, defendant's inquiry shall be limited in scope to inquire into issues raised in plaintiff's operative pleading.

Defendant's request as to RPDs nos. 37 and 38 are denied.

12. S-CV-0034830 Britt, Diane L., et al vs. GC-REOF I, LLC

Defendant's Demurrer to the Complaint is sustained with leave to amend. A party may demur to a complaint where the pleading does not state facts sufficient to constitute a cause of action. (CCP§430.10(e).) A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) As such, the allegations in the pleadings are deemed to be true no matter how improbable the allegations may seem. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) In this instance, a review of the third cause of action for usury and fourth cause of action for UCL violations reveals that both claims are insufficiently pled.

The elements of a usury claim are (1) the existence of a loan or forbearance transaction; (2) the interest to paid exceeds the statutory minimum; (3) the loan and interest are absolutely repayable by the borrower; and (4) the lender had willful intent to enter into a usurious transaction. (*Ghirardo v. Antonioli* (1994) 8 Cal.4th 791, 798.) There are also numerous statutory exemptions, along with numerous persons, that are exempted from the usury provisions. (California Constitution Article 15, Section 1.) The complaint does not allege all of the essential elements for a usury claim. Those that are alleged are done in a conclusory fashion. Further, the complaint does not sufficiently allege that absence of an applicable exemption to the alleged usurious transaction.

As to the fourth cause of action, "[t]he UCL does not proscribe specific activities, but broadly prohibits any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising. ...By proscribing 'any unlawful business practice,' section 17200 'borrows' violations of other laws and treats them as unlawful practices that the unfair competition law makes independently actionable. Because section 17200 is written in the disjunctive, it establishes three varieties of unfair competition-acts or practices which are unlawful, or unfair, or fraudulent. In other words, a practice is prohibited as 'unfair' or 'deceptive' even if not 'unlawful' and vice versa." [Citations and quotations omitted.] (*Puentes v. Wells Fargo Home Mortg., Inc.* (2008) 160 Cal.App.4th 638, 643-644.) Upon review, the UCL claim is pled in a conclusory manner with fails to sufficiently identify the unlawful, unfair, or fraudulent acts and/or

practices. Since both of these causes of action are deficient, the demurrer is sustained with leave to amend.

The first amended complaint shall be filed and served on or before March 13, 2015.

13. S-CV-0034936 Johnson, James T., III, et al vs. Wells Fargo Bank, N.A.

The demurrer is continued to March 26, 2015 at 8:30 a.m. in Department 40. The court notes that a reply was filed that mentions an opposition to the demurrer. However, there is no record of the opposition in the court file. Plaintiff is requested to submit an endorsed filed copy of the opposition by March 12, 2015.

14. S-CV-0035286 Weimer, Robert, Jr. vs. Nationstar Mortgage, LLC, et al

The demurrer to the first amended complaint is continued, on the court's own motion, to March 26, 2015 at 8:30 a.m. to be heard by the Honorable Michael W. Jones.

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